

UNDT/2014/089, Scheepers et al

UNAT Held or UNDT Pronouncements

With respect to the issue of classification of the Applicants' post at the S-3 level, the UNDT found that the Applicants' claims regarding the Administration's decision not to proceed with their classification request were receivable. However, based on the evidence in this case—including oral testimony as well as contemporaneous documents—the Applicants did not perform the same exact functions as their S-3 level colleagues. Accordingly, the UNDT found that the Administration's decision not to proceed with the classification or reclassification of the Applicants' posts at the S-3 level was based on proper considerations—namely that the functions performed by S-2 and S-3 level Security Officers were not in fact identical—and was therefore lawful. With respect to the issue of special post allowance to the S-3 level, the UNDT found the Applicants' claims receivable. The UNDT found, however, that the Applicants did not satisfy the criteria for SPA and that the Administration's decision not to provide them SPA was based on proper reasons and considerations and was lawful. With respect to the promotion exercise held in 2010–2011, the UNDT found that the application of Applicant Pauksens was receivable, whereas the applications of Applicants Sitarek, Toriano, Scheepers and Aitcheson were not. The UNDT found that the requirement of five years of service with SSS for a promotion to the S-3 level was contrary to formally promulgated administrative issuances, including the Organization's rules on selection, and was arbitrary, manifestly unreasonable, and unlawful. The UNDT found it appropriate to award Applicant Pauksens USD6,000 as compensation for the loss of a reasonable chance of promotion to the S-3 level as part of the 2010–2011 promotion exercise and the resultant pecuniary loss.

Decision Contested or Judgment/Order Appealed

The Applicants, five Security Officers serving at the S-2 level with the Security and Safety Service ("SSS"), Department of Safety and Security ("DSS"), filed five separate applications challenging the Administration's failure to classify or reclassify their posts; its failure to pay them special post allowance ("SPA") at the S-3 level; and the eligibility requirements introduced for the SSS promotion exercise held in 2010–2011. They sought compensation at the senior S-3 level arising from their service with the Canine Unit ("K-9 Unit") of SSS. With respect to the issue of classification of the Applicants' post at the S-3 level, the UNDT found that the Applicants' claims regarding the Administration's decision not to proceed with their classification request were receivable. However, based on the evidence in this case—including oral testimony as well as contemporaneous documents—the Applicants did not perform the same exact functions as their S-3 level colleagues. Accordingly, the UNDT found that the Administration's decision not to proceed with the classification or reclassification of the Applicants' posts at the S-3 level was based on proper considerations—namely that the functions performed by S-2 and S-3 level Security Officers were not in fact identical—and was therefore lawful. With respect to the issue of special post allowance to the S-3 level, the UNDT found the Applicants' claims receivable. The UNDT found, however, that the Applicants did not satisfy the criteria for SPA and that the Administration's decision not to provide them SPA was based on proper reasons and considerations and was lawful. With respect to the promotion exercise held in 2010–2011, the UNDT found that the application of Applicant Pauksens was receivable, whereas the applications of Applicants Sitarek, Toriano, Scheepers and Aitcheson were not. The UNDT found that the requirement of five years of service with SSS for a promotion to the S-3 level was contrary to formally promulgated administrative issuances, including the Organization's rules on selection, and was arbitrary, manifestly unreasonable, and unlawful. The UNDT found it appropriate to award Applicant Pauksens USD6,000 as compensation for the loss of a reasonable chance of promotion to the S-3 level as part of the 2010–2011 promotion exercise and the resultant pecuniary loss.

Legal Principle(s)

Time limits: For time limits to run, it is generally required that the staff member be properly notified of the contested decision. Reasonable discretion: Reasonable exercise of discretion means that a determination reached with regard to the period of eligibility must be reasonable and not arbitrary, and take into account relevant and proper factors and considerations and disregard the improper ones. Legal force of guidelines and manuals: Circulars, guidelines, manuals, and other similar documents may, in appropriate situations, set standards and procedures for the guidance of both management and staff, but only so long as they are consistent with the instruments of higher authority and other general obligations that apply in an employment relationship. Compensation: Not every violation will necessarily lead to an award of compensation; compensation may only be awarded if it has been established that the staff member actually suffered damages.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Only financial compensation

Full judgment

[Full judgment](#)

Applicants/Appellants

Scheepers et al

Entity

DSS

Case Number(s)

UNDT/NY/2011/042

UNDT/NY/2011/043

UNDT/NY/2011/045

UNDT/NY/2011/048

UNDT/NY/2011/049

Tribunal

UNDT

Registry

New York

Date of Judgement

26 Jun 2014

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Classification (post)

Due process

Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions

- ST/AI/1998/9
- ST/AI/1999/17
- ST/AI/2006/3
- ST/AI/2010/3

Staff Rules

- Rule 3.10

UNDT Statute

- Article 10.5
- Article 2.1

Related Judgments and Orders

UNDT/2010/068

UNDT/2010/165

UNDT/2012/118

UNDT/2012/146

UNDT/2012/178

UNDT/2013/176

2010-UNAT-013

2010-UNAT-095

2011-UNAT-117

2011-UNAT-180

2012-UNAT-219

2012-UNAT-260

2013-UNAT-368

2014-UNAT-404

2011-UNAT-107